

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U S DISTRICT COURT E.D.N.Y.

★ MAY 30 2012 ★

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JOSEPH A. FERRARA, SR., et al.,

Plaintiffs,
 – against –

NORDEV LLC.,

Defendant.
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: **LONG ISLAND OFFICE**
: **ORDER**
: **10-CV-5844 (JFB)(WDW)**

JOSEPH F. BIANCO, District Judge:

On March 26, 2012 plaintiff moved for an Order finding Nordev LLC and its principal Noreen Zasa (“Zasa”) in contempt.

On April 10, 2012, Magistrate Judge William D. Wall issued a Report and Recommendation certifying “the facts underlying the misbehavior of the defendant Nordev LLC and of its principal, non-party Noreen Zasa, and to recommend that they appear before District Judge Bianco on a date certain to be set by Judge Bianco, to show cause why they should not be adjudged in contempt of the orders issued by [Magistrate Judge Wall] on November 7, 2011 and December 14, 2011.” (Report and Recommendation, at 1.) The Report and Recommendation also recommends that Nordev and Zasa should be subjected to daily fines of \$1000 until the subpoena is complied with and be required to pay \$4908.99 to the plaintiff Funds as reasonable attorney’s fees and costs associated with the unnecessarily protracted process of obtaining compliance with the subpoena, and that Nordev and Zasa be jointly and severally liable for the daily finds, attorney’s fees, and costs. (*Id.*) The Report and Recommendation states that “[a]ny objections to this Report and Recommendation must be filed with the Clerk of the Court within

14 days,” and that “[f]ailure to file objections within this period waives the right to appeal the District Court’s order.” (*Id.* at 9.) To date, although the deadline for objections has expired, no objections have been filed.

When a party submits a timely objection to a report and recommendation, the district judge will review the parts of the report and recommendation to which the party objected under a *de novo* standard of review. *See* 28 U.S.C. § 636(b)(1)(C) (“A judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.”); Fed. R. Civ. P. 72(b)(3) (“The district judge must determine *de novo* any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.”). Where clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the report and recommendation without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985) (“It does not appear that Congress intended to require district court review of a magistrate’s factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings.”); *see also Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”). However, because the failure to file timely objections is not jurisdictional, the district judge can still excuse the failure to object in a timely manner and exercise its discretion to decide the case on the merits to, for example, prevent plain error. *See Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) (“[B]ecause the waiver rule is non

jurisdictional, we ‘may excuse the default in the interests of justice.’” (quoting *Thomas v. Arn*, 474 U.S. at 155)).

Although no objections have been filed and thus *de novo* review is not required, the Court has conducted a *de novo* review of the Report and Recommendation in an abundance of caution and HEREBY ADOPTS the well-reasoned and thorough Report and Recommendation in its entirety.

IT IS ORDERED that Nordev LLC and its principal Zasa shall appear before this Court on Monday, July 2, 2012, at 2:00 p.m. and show cause why they should not be adjudged in contempt of the Orders issued by Magistrate Judge Wall on November 7, 2011 and December 14, 2011 by reason of the certified facts set forth in Magistrate Judge Wall’s Report and Recommendation.

IT IS FURTHER ORDERED that plaintiffs shall serve a copy of this Order on Nordev LLC and its principal Zasa and file an affidavit of service with the Court.

~~SO ORDERED~~

~~JOSEPH F. BIANCO~~
~~UNITED STATES DISTRICT JUDGE~~

Dated: May 30, 2012
Central Islip, NY